

City of Berkeley
RENT CONTROL LEGISLATION

1. Charter, Article XVII (Elected Rent Stabilization Board)
2. Ordinance No. 5109-N.S. (1978) (Renter Property Tax Relief)
3. Ordinance No. 5212-N.S. (1979) (amended by Ord. No. 5224-N.S. and 5350-N.S.) (Adopting a Temporary Rent Stabilization Program)
4. Ordinance No. 5242-N.S. (1980) (Adopting Temporary Eviction Controls)
5. BMC Chapter 13.76 (Ordinance No. 5261-N.S., as amended by Ordinance No. 5467-N.S.) (1980) (Rent Stabilization and Eviction for Good Cause Program)
6. BMC Chapter 13.80 (Ordinance No. 5468-N.S.) (1982) (Elmwood Commercial Rent Stabilization and Eviction Protection Ordinance)

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CHARTER OF THE CITY OF BERKELEY

ARTICLE XVII. ELECTED RENT STABILIZATION BOARD

Section 120. Purpose of Elected Rent Stabilization Board.

The purpose of this article is to provide for proper administration of programs to regulate residential rents; to protect tenants from unwarranted rent increases and arbitrary, discriminatory or retaliatory evictions; to help maintain the diversity of the Berkeley community; and to ensure compliance with legal obligations relating to the rental of housing.

Section 121. Composition of Rent Board.

There shall be in the City of Berkeley an Elected Rent Stabilization Board. The Board shall consist of nine elected Commissioners. The Board shall elect annually one of its members to serve as Chairperson.

(1) Eligibility.

Residents who are duly qualified electors of Berkeley are eligible to serve as Commissioners of the Board.

(2) Full Disclosure of Holdings.

Candidates for the position of Commissioner shall fulfill the requirements as set forth in this Charter in Article III, Sec. 6½.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

(3) Conflict of Interest.

Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes.

Owners of rental property with rents controlled by Berkeley Ordinance shall constitute the rental industry for purposes of this Article. Tenants constitute a large and significant part of the general public. Decisions by the Board have a material financial effect on members of the rental industry different from the general public.

Section 122. Election of Commissioners.

Commissioners shall be elected at the statewide general election held in November of even numbered years, except as provided by subsection (3) below.

(1) Term of Office.

Commissioners shall serve terms beginning on the first day of the month following their election. Terms shall be four years, except as provided by subsection (4) below. Commissioners shall serve a maximum of two full terms.

(2) Recall.

Commissioners shall be subject to recall as provided in Article IV of this charter.

(3) The First Election of Board.

The election for the first board shall be held at the regular municipal, statewide primary or statewide general election, whichever first occurs at least 90 days after enactment of this article.

(4) Term of Office of First Board.

Of the nine Commissioners elected under subsection (3), the five Commissioners receiving the least votes shall hold office until the last day of November in the next even numbered year. The remaining four Commissioners shall hold office for an additional two years, those terms also ending on the last day of November of the appropriate year.

Section 123. Powers and Duties.

The elected Rent Stabilization Board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions.

(1) Replacement of Appointed Board.

The Board provided for in this Article shall, upon taking office, replace and supercede the appointed Board provided in Berkeley Ordinance 5261-N.S. The elected Board shall assume each and every, all and singular, powers, duties, rights and responsibilities of said appointed Board. At such time, said appointed Board shall cease exercising any of the above except to aid in transition as requested by the newly elected Board. At the conclusion of the transitional period (as determined by the elected Board) said appointed Board shall cease to exist as a legal entity.

(2) Hiring of Staff.

The Board shall be a working Board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance. The Board shall have the power to hire and fire staff notwithstanding Article VII, Sections 28(b) and (c) and Article XVI, Section 119 of the City Charter. The City Manager shall continue to provide such supportive services as are appropriate under Berkeley Ordinance. The Board shall follow the City of Berkeley affirmative action employment policy.

(3) Financing.

The Board shall finance its reasonable and necessary expenses by charging landlords, annual registration fees in amounts deemed reasonable by the Board. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the Board. The Board is also empowered to request and receive funding. When and if necessary, from the City of Berkeley and/or any other available source for its reasonable and necessary expenses.

(4) Additional Powers and Duties.


With the Rent Board's consent, the City Council may assign additional powers and duties to the Rent Board as appropriate. Furthermore, the electorate may give additional powers or duties through initiative ordinance as provided by this Charter.

(5) Quorum.

Five (5) Commissioners shall constitute a quorum for the Board. The affirmative vote of five (5) Commissioners of the Board is required for a decision, including all motions, rules, regulations and orders of the Board.

Section 124. Severability.

If any provision of this Article is adjudged by a court of competent jurisdiction to be unenforceable, such adjudication shall not affect the enforceability of any other provisions, and this Article shall continue in full force and effect as if such unenforceable provision were not a part hereof.



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RENTER PROPERTY TAX RELIEF ORDINANCE

BE IT ORDAINED by the People of the City of Berkeley as follows:

Section 1. TITLE.

This ordinance shall be known as the Renter Property Tax Relief Ordinance of 1978.

Section 2. PURPOSE.

The passage of Proposition 13 on June 6, 1978 has provided some property tax relief to homeowners and owners of rental property without providing any tax relief to renters. The shortage of affordable rental property in the City of Berkeley, and rising rents resulting from this shortage, has produced a severe problem for a significant proportion of residential and commercial Berkeley renters, and has endangered the health, safety and welfare of all Berkeley residents. In view of this serious problem, it is necessary as well as fair that renters be provided with a portion of the benefits of the property tax relief resulting from Proposition 13. Therefore, the purpose of this Ordinance is to ensure that renters, who have shared the burdens of property taxes, will receive a fair share of the benefits of property tax reductions on rental property established by the passage of Proposition 13, enacting Article XIII A of the Constitution of the State of California.

Section 3. DEFINITIONS.

The following words or phrases as used in this Ordinance shall have the following meanings:

(a) Rental Unit: Any building, structure, or part thereof, or land appurtenant thereto, or any other real property rented or available for rent for any purpose located in the City of Berkeley, together with all services connected with the use or occupancy of such property.

(b) Owner: An owner, lessor, sublessor or any other person entitled to receive rent for the use or occupancy of any rental unit, or an agent or successor of any of the foregoing.

(c) Renter: A tenant, subtenant, lessee or sublessee of a rental unit, or any group of tenants, subtenants, lessees or sublessees of a rental unit.

(d) Rental Agreement: An agreement, verbal, written or implied, between an owner and a renter for the use or occupancy of any rental unit.

(e) Property: A parcel of real property which is assessed and taxed as an undivided whole.

(f) Rent: The consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units or the transfer of a lease for such units including but not limited to monies demanded or paid for parking, pets, furniture, and subleasing, or for the installation and use of equipment and fixtures.

Section 4. APPLICABILITY.

This Ordinance shall apply to all real property which is being rented or is available for rent in whole or in part except for the following:

(a) Such property which is exempt from property taxes.

(b) Rental units in hotels, motels, inns, tourist homes and rooming and boarding houses which are rented primarily to transient guests for a period of less than fourteen (14) days.

(c) Units in non-profit cooperatives owned and controlled by a majority of the residents.

(d) Rental units in any hospital, extended medical care facility, asylum, or non-profit home for the aged.

(e) Residential property which is divided into a maximum of four (4) units where one of such units is occupied by the owner as her or his principal residence. However, for the purpose of applying the exemption in this subsection the term owner shall not include a sublessor or an agent of an owner.

Section 5. PARTIAL APPLICABILITY TO SUBSIDIZED HOUSING.

(a) Any unit of subsidized housing exempted or preempted by Federal or State law or administrative regulation from the imposition of maximum rents by municipal ordinance shall not be subject to any maximum rents imposed by this Ordinance.

(b) Eighty percent (80%) of the property tax savings calculated pursuant to Section 8 of this Ordinance shall be passed on to renters of subsidized housing and apportioned among rental units in a property in a manner substantially consistent with Section 8 of this Ordinance unless such manner of apportionment among units is otherwise provided by Federal and or State law or administrative regulation or regulatory agreement with the governmental agency empowered to regulate such subsidized housing.

Section 6. MAXIMUM ALLOWABLE RENT UNTIL DECEMBER 31, 1978.

Every owner of rental property shall make the appropriate calculations as indicated in this Section for each property covered by this Ordinance.

(a) For the purposes of this Ordinance, the rent under the rental agreement in effect on June 6, 1978 for each rental unit covered by this Ordinance shall constitute the Base Rent. For rental units where no rent was in effect on June 6, 1978, the last rent in effect for that unit in the preceding six months shall constitute the Base Rent. For rental units where no rent was in effect on June 6, 1978 or in the preceding six months, the Base Rent shall be a good faith estimate of the average rent in effect for comparable units in the City of Berkeley on June 6, 1978.

(b) Commencing on the date on which rent is next due and payable following the date of adoption of this Ordinance and until December 31, 1978, the maximum allowable rent for any rental unit covered by this Ordinance shall be the Base Rent as determined in subsection (a) of this Section.

Within fifteen days after the adoption of this Ordinance, but in no event later than the date on which rent is next due and payable after adoption of this Ordinance, the owner shall provide the renter of each rental unit covered by this Ordinance with a written notice of the rent in effect until December 31, 1978 as determined by Section 6 of this Ordinance.

Section 8. DETERMINATION OF RENTER PROPERTY TAX RELIEF AND MAXIMUM ALLOWABLE RENT FOR CALENDAR YEAR 1979.

Upon the issuance of property tax bills for 1978-79 reflecting the provisions of Article XIII A of the Constitution of the State of California, every owner of rental property shall make the appropriate calculations, as indicated in this Section, for each property and rental unit covered by this Ordinance.

(a) Total Base Rent

(i) For property which includes only rental units, the Total Base Rent shall be the sum of the Base Rents, as calculated pursuant to Section 6 of this Ordinance, for all rental units in that property.

(ii) For property used partly for rental purposes, a good faith estimate of the fair market rental value of the unrented portion of the property, including any owner-occupied portion, shall be made based on the average rent in effect on June 6, 1978 for comparable portions of property in the City of Berkeley. This estimate plus the sum of the Base Rents for all rental units in the property shall constitute the Total Base Rent.

(b) Property Tax Savings

For the purposes of this Ordinance, Property Tax Savings shall constitute the total taxes due, including all installments, as listed on the 1977-78 property tax bill less the total property taxes due, including all installments, as listed on the 1978-79 property tax bill. A difference of less than zero shall be considered as zero.

(c) Property Tax Relief to be Allocated

The Property Tax Relief to be Allocated among units in a property shall be eighty percent (80%) of the Property Tax Savings for that property.

(d) Allocation of Property Tax Relief Among Units

(i) For property covered by this Ordinance, the Property Tax Relief as defined in subsection (c) of this Section shall be allocated among rental units and any unrented units in the property, including owner-occupied portions. Such allocation shall be made by determining the percentage of the Total Base Rent of a property that the Base Rent for each unit in that property constitutes, and multiplying this percentage by the Property Tax Relief to be Allocated for that property. For each rental unit in a property, the resulting dollar amount shall be the Rental Property Tax Relief to be apportioned over calendar year 1979.

(ii) In the case where Base Rents for different units in the same property are not directly comparable to each other, such as where rents for some but not all units are based on gross receipts, the necessary calculations shall be made so that the allocation of Renter Property Tax Relief is determined in an equitable manner consistent with the purposes of this Ordinance.

(e) Apportionment of Renter Property Tax Relief as Rent Reductions Over Calendar Year 1979

The Renter Property Tax Relief for each rental unit covered by this ordinance, as determined in subsection (d) of this Section shall be apportioned over calendar year 1979 by reducing the Base Rent of the rental unit by an amount equal to that unit's allocated Renter Property Tax Relief divided by the number of rent payments to be made in 1979 by the renter of the unit pursuant to the rental agreement. For example, if rent is paid on a monthly basis, one-twelfth (1/12) of the unit's allocated Renter Property Tax Relief shall be the monthly rent reduction over calendar year 1979. If a rental unit covered by this Ordinance is rented to a particular renter for only part of calendar year 1979, the Renter Property Tax Relief to be provided to that renter in 1979 shall be proportional to the percentage of time during 1979 the rental unit is rented to that renter.

(f) Rounding to Dollar Amount

In order to simplify the calculations made under this Ordinance money amounts may be rounded to the nearest dollar.

(g) Maximum Allowable Rent for Calendar Year 1979

Commencing on January 1, 1979 and until December 31, 1979, the maximum allowable rent for any rental unit covered by this Ordinance shall be the Base Rent, as determined in Section 6 of this Ordinance, reduced by the apportioned Renter Property Tax Relief allocated for that unit as determined in this Section.

Section 9. NOTICE OF RENTER PROPERTY TAX RELIEF AND MAXIMUM ALLOWABLE RENT FOR CALENDAR YEAR 1979.

(a) By December 15, 1978 or within fifteen days of the issuance of the property tax bills for fiscal year 1978-79, whichever is later, the renter of each rental unit covered by this Ordinance shall be provided by the owner with a written notice of the Renter Property Tax Relief for that rental unit and the rent in effect for that rental unit for calendar year in 1979 as calculated pursuant to Section 8 of this Ordinance. Such notice shall substantially follow the form set out in Appendix A of this Ordinance.

(b) When a rental unit covered by this Ordinance is rented to a new renter during calendar year 1979, the new renter shall be provided by the owner with a written notice of the allocated Renter Property Tax Relief for that unit and the rent in effect for that rental unit for calendar year 1979 as determined under Section 8 of this Ordinance. Such notice shall be provided by the date the first rent is due and payable and shall substantially follow the form set out in Appendix A of this Ordinance.

(c) After the date on which notices required by this Section must be issued, the owner must provide, within seven days of the receipt of a written request by a renter of a rental unit in the owner's property, a written list of the

amounts of such units and whether property for rent is in the property including unrented units. Whenever possible, this list shall not identify specific units.

(d) A sublessor may satisfy the notice requirements of this Section by providing notices to sublessees within one week of receipt of the corresponding notice from the lessor.

Section 10. RENTER REMEDIES.

(a) If a notice required by this Ordinance has not been provided in good faith by the date required, a renter may notify the owner to issue such a notice within three days. If, after three days, the required notice has not been provided to the rented, the renter may take any or all of the following actions until compliance is achieved:

(i) A renter may withhold one-half of the rent otherwise due the owner. If the owner files an action for nonpayment of rent or an action for eviction for nonpayment of rent, the renter must deposit the withheld rent with the appropriate Court when and if the owner requests such deposit of rent with the Court, and if the Court so orders.

(ii) A renter may seek injunctive relief on behalf of herself or himself and on behalf of other affected renters to restrain the owner from demanding or receiving any rent until the owner has complied with this Ordinance.

(b) If an owner demands, accepts, receives or retains any payment in excess of the maximum allowable rent permitted by this Ordinance, a renter may notify the owner to return such excess payment or rescind any demand for excess payment within three days. If the owner has not returned any excess rent to the renter or rescinded any demand for excess rent within three days of such notice, the renter may:

(i) Take any of the actions set out in subsection (a) of this Section until compliance is achieved.

(ii) File a damage suit against the owner for actual damages. Upon proof of willful violation of this Ordinance by an owner, the renter shall receive a judgment of up to two hundred dollars (\$200) or three (3) times the amount by which the payment or payments exceeds the maximum lawful rent determined by this Ordinance, whichever is greater.

(c) The City Attorney may bring an action for injunctive relief on behalf of renters seeking compliance by owners with this Ordinance.

Section 11. RETALIATION.

No owner may retaliate against a renter for the renter's assertion or exercise of rights under this Ordinance by threatening to bring or bringing an action for possession, causing the renter to quit involuntarily, decreasing any services or increasing the rent. In an action by or against the renter, evidence of the assertion or exercise by the renter of her or his rights under this Ordinance within three months prior to the alleged act of retaliation shall create a presumption that the owner's conduct was in retaliation for the renter's assertion or exercise of rights under this Ordinance. "Presumption" means that the Court must find the existence of the fact presumed, unless and until evidence is introduced which would support a finding of its nonexistence.

Section 12. RENT INCREASE ALLOWED.

(a) Notwithstanding Sections 6 and 8 of this Ordinance, an owner may charge a rent greater than the rent allowed under Sections 6 and 8 of this Ordinance if the increased rent represents increased costs actually paid by the owner to the extent these costs exceed the twenty percent (20%) of the property tax savings retained by the owner. The total amount by which rents for a rental unit are increased under the provisions of this Section shall not exceed the total cost increases allowed under this Section reduced by the twenty percent (20%) of the property tax savings retained by the owner. Such increased costs must be related to the rental unit on which the increased rent is charged, and are limited to:

(i) increased costs resulting from the sale or refinancing pursuant to a sale of property which requires higher current payments on that property, provided such sale or refinancing is not made to evade provisions of this Ordinance;

(ii) increases in taxes and/or fees related to the operation of the property except for State and Federal personal and corporate income taxes;

(iii) increases in insurance premiums for the same type of coverage previously held on the property, and for new coverage required by law or the lenders;

(iv) unavoidable increases in maintenance and operating expenses, including increases in the costs of utilities provided to the property at the owner's expense; and

(v) increased costs of substantial rehabilitation of capital improvements undertaken after June 6, 1977 and on or before the date of adoption of this Ordinance, or with the informed consent of all renters in the property when such rehabilitation or improvements are undertaken after the date of the adoption of this Ordinance, or when such rehabilitation or improvements are undertaken as required to bring the property into compliance with the implied warranty of habitability and applicable housing codes, provided that such costs are apportioned over a good faith estimate of the life of such rehabilitation or improvements.

(b) An owner wishing to increase rents to cover increased costs under this Section must notify renters in writing at least thirty days in advance of such rent increase and provide a clear financial statement which explains and documents the increased costs which necessitate the rent increase.

Section 13. RENT ADJUSTMENTS AFTER JANUARY 1, 1980.

If, on or after January 1, 1980, the rent for a rental unit covered by this Ordinance is increased by more than five percent (5%) on an annual basis above the maximum allowable rent determined according to this Ordinance for calendar year 1979, the notice to the renter of this increase shall contain a clear and detailed financial statement which documents the reasons for such an increase.

Section 14. CRIMINAL PENALTIES.

An intentional failure to comply with the provisions of this Ordinance shall be a misdemeanor.

Section 15. PARTIAL INVALIDITY.

If any provision of this Ordinance or application thereof to any person or circumstance is held to be invalid, this invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this Ordinance are severable.

This Ordinance was approved by the electors of the City of Berkeley at the Municipal Election held in the City of Berkeley on November 7, 1978.

In effect: November 7, 1978

APPENDIX A: THE FORM FOR THE NOTICE OF RENTER PROPERTY TAX RELIEF AND MAXIMUM ALLOWABLE RENT FOR CALENDAR YEAR 1979.

In accordance with the City of Berkeley Renter Property Tax Relief Ordinance of 1978, this notice informs you of a required reduction in rent for the rental unit located at _____. The amount of the rent reduction has been determined as follows:

The total 1977-78 property taxes which were due for the property which includes your rental unit was _____ dollars. The total 1978-79 property taxes due for this property is _____ dollars. The difference, or total tax savings for this property, reflecting the passage of Proposition 13 on June 6, 1978, amounts to _____ dollars. Eighty percent of this savings, or _____ dollars, is the total, property tax relief to be allocated among units of this property during the calendar year 1979.

The total Base Rent for the property which includes your rental unit, as determined by rents in effect on June 6, 1978, is _____ dollars. (If appropriate: This total Base Rent includes an estimated fair market rental value for owner-occupied units of _____ dollars, and an estimated Base Rent(s) for rental units in this property for which no rent was in effect on June 6, 1978 of _____ dollars, _____ dollars, etc) The Base Rent for your rental unit is _____ dollars, which is equal to _____ percent of the total Base Rent for the property.

This percentage, multiplied by the total property tax relief for the property equals _____ dollars which is your proportionate share of the property tax relief for the year 1979. Since your rent is paid in _____ installments over calendar year 1979, each of your rental payments of _____ dollars per _____ (the Base Rent for your rental unit) shall be proportionately reduced by _____ dollars per _____, giving you a new rent of _____ dollars per _____.

Signature of owner _____

Date _____

ADOPTING A TEMPORARY RENT STABILIZATION PROGRAM.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. TITLE.

This Ordinance shall be known as the Temporary Rent Stabilization Ordinance.

Section 2. FINDINGS.

a. The Housing Element of the Berkeley Master Plan of 1977 states that:

(1) Berkeley residents have the right to decent housing in pleasant neighborhoods which meet standards of adequacy at a range of prices they can afford (Goal 1).

(2) Existing housing should be maintained and improved (Goal 2).

(3) Berkeley should have an adequate supply of housing throughout the City for persons with special needs (Goal 3).

(4) All residents should have equal access to housing opportunities, financing and insurance on a non-discriminatory basis (Goal 4).

b. On June 6, 1972, the electorate of the City of Berkeley passed a Rent Control Charter Amendment that was later voided by the California Supreme Court as being unconstitutional.

c. On June 5, 1973, the City Council declared the existence of a housing emergency in the City of Berkeley, based upon the Council's finding of a pattern of steadily rising rents, a shortage of decent housing and an increased deterioration of the existing housing stock in the City.

d. On November 7, 1978 the electorate of the City of Berkeley passed a Renter Property Tax Relief Ordinance.

e. On October 25, 1979 the Berkeley City Council, Berkeley Housing Authority, the Berkeley Housing Advisory and Appeals Board, and members of the City's administrative staff held a public workshop regarding the current housing conditions in Berkeley.

f. On October 30, 1979 the Berkeley City Council held a public hearing at which members of the public expressed their views regarding current housing conditions in Berkeley.

g. The most significant provisions of the 1978 Renter Property Tax Relief Ordinance will expire on December 30, 1979.

h. The development of comprehensive legislation and programmatic remedies by the City will require time for study, evaluation and development. The City Council of the City of Berkeley hereby adopts temporary legislation to assure that, subsequent to December 30, 1979 and prior to the adoption of permanent legislation intended to address the City of Berkeley's housing crisis, the public peace, health and safety are immediately preserved, and that, in particular, the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped, and the aged are not endangered prior to public consideration and adoption of permanent legislation to protect the public peace, health and safety.

Section 3. PURPOSE.

The purpose of this Ordinance is to regulate rent increases for a temporary period. During this period the City of Berkeley will take the opportunity to study the desirability and feasibility of measures to address the problems resulting from the critical housing shortage presently facing the residents of the City of Berkeley.

Section 4. DEFINITIONS.

a. Rental Unit: Any building, structure, or part thereof, or any other real property rented or available for rent for residential use located in the City of Berkeley, together with all services supplied in connection with the use or occupancy of such property.

b. Tenant: Any renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of a rental unit.

c. Rental Agreement: An agreement, verbal, written or implied between a landlord and a tenant for the use or occupancy of any residential unit.

d. Rent: The consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units including, but not limited to, monies demanded or paid for use, occupancy, parking, pets, furnishings, housing services, sublessees and deposits.

e. Property: A parcel of real property which is assessed and taxed as an undivided whole.

f. Landlord: An owner-of-record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

g. Skilled Nursing Facility: "Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility, can be obtained promptly when needed.

h. Health Facility: "Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

i. Fees: A fee, for the purposes of this ordinance, is a charge fixed by law for services of public officers or for use of a privilege under control of government.

Section 5. APPLICABILITY.

This Ordinance shall apply to all real property which is being rented or is available for rent for residential use in whole or in part except for the following:

- a. Such rental units which are owned by any government agency.
- b. Rental units which are rented primarily to transient guests for a period of less than fourteen (14) days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses.
- c. Rental units in non-profit cooperatives owned and controlled by a majority of the residents.
- d. Rental units leased by the Berkeley Housing Authority under the Section 23 program (42 USC 1421b) or units leased to tenants assisted under the Section 8 program (42 USC 1437f).
- e. Rental units in any hospital, skilled nursing facility, asylum, or non-profit home for the aged.
- f. Newly constructed rental units which are completed and offered for rent for the first time after the effective date of this Ordinance.
- g. Rental units in a residential property which is divided into a maximum of four (4) units where one of such units is occupied by the landlord as his/her principal residence. For the purposes of this subsection, the term landlord shall be defined as the owner of record and shall not include a lessor, sublessor or agent of the owner of record.

Section 6. MAXIMUM ALLOWABLE RENT.

a. For the duration of this Ordinance, the landlord shall not charge, demand, accept or receive a rent higher than the amount set forth in this Section for any unit covered by the terms of this Ordinance, except as permitted by Section 7 of this Ordinance.

b. For all rental units covered by the terms of this Ordinance the maximum allowable rent shall be the lawful rent in effect on December 30, 1979. For such rental units where no rent was in effect on December 30, 1979, the maximum allowable rent will be the most recent lawful rent in effect for that rental unit during the six months preceding that date. For such rental units where no rent was in effect on December 30, 1979, or during the six months preceding that date, the maximum allowable rent shall be a good faith estimate of the median rent in effect for comparable units in the City of Berkeley on December 30, 1979.

c. The lawful rent for a rental unit shall be the lawful rent which was actually due under the periodic term of the rental agreement, on, or last preceding, December 30, 1979.

Section 7. RENT INCREASE ALLOWED.

a. A landlord may charge a rent greater than the rent allowed under Section 6 of this Ordinance, subject to the limitation contained in subsection c. of this Section, if the increased rent represents costs actually paid by the landlord after the effective date of this Ordinance, providing that such costs had not already been the basis of a rent increase allowed under the Renter Property Tax Relief Ordinance of 1978. Such increased costs must be related to the rental unit on which the increased rent is charged and are limited to:

(1) increases in taxes and/or fees related to the operation of the property except for State and Federal personal and corporate taxes;

(2) increases in insurance premiums for the same type of coverage previously held on the property, and for new coverage required by law or the lenders;

(3) unavoidable increases in maintenance and operating expenses, including increases in the costs of utilities provided to the property at the owner's expense; and,

(4) increased costs of substantial rehabilitation or capital improvements undertaken with the informed consent of all tenants in the property or when such rehabilitation or improvements are undertaken as required to bring the property into compliance with the implied warranty of habitability and applicable housing codes, provided that such costs are apportioned over a good faith estimate of the life of such rehabilitation or improvements.

b. A landlord wishing to increase rents to cover increased costs under this Section must notify tenants in writing of such rent increase and provide a clear financial statement which explains and documents the increased costs which necessitate the rent increase at least 30 days in advance of such rent increase. Receipts substantiating the financial statement provided for in this Section shall be provided by the landlord within 14 days from the date of request if so requested.

c. Rent increases allowed by this Section shall not exceed five percent (5%).

Section 8. TENANT NOTIFICATION.

a. By December 31, 1979 the tenant of each rental unit covered by this Ordinance shall be provided by the landlord with a written notice of the maximum allowable rent as set forth in Section 6 of this Ordinance.

b. When a rental unit covered by this Ordinance is rented to a new tenant, the landlord shall provide the new tenant with a written notice of the maximum allowable rent as set forth in Section 6 of this Ordinance. Such notice shall be provided by the date the first rent is due and payable.

c. A sublessor may satisfy the notice requirements of this Section by providing notices to sublessees within one week of receipt of the corresponding notice from the lessor.

Section 9. REMEDIES.

a. If a notice required by Section 8 of this Ordinance has not been provided by the date required, or if a landlord demands, accepts, receives or retains any payment in excess of the maximum allowable rent permitted by this Ordinance, a tenant may take any or all of the following actions until compliance is achieved:

(1) A tenant may withhold up to the full amount of his or her periodic rent which is allowed under the provisions of this Ordinance. In any action for eviction based on nonpayment of rent, possession shall not be granted where the tenant has withheld rent in good faith under this Section.

(2) A tenant may seek injunctive relief on behalf of herself or himself and on behalf of other similarly situated tenants to restrain the landlord from demanding or receiving any rent on this unit until the landlord has complied with this Ordinance.

(3) A tenant may file a damage suit against the landlord for actual damages when the landlord receives or retains any rent in excess of the maximum rent allowed by this Ordinance. Upon further proof of a bad faith claim or retention of rent in excess of the maximum rent allowed by this Ordinance the tenant shall receive a judgment of up to seven hundred and fifty dollars (\$750.00) in addition to any actual damages.

b. The City Attorney may bring an action for injunctive relief on behalf of the City or on behalf of tenants seeking compliance by landlords with this Ordinance.

Section 10. RETALIATION PROHIBITED.

No landlord may threaten to bring, or bring, an action for possession, cause the tenant to quit the unit involuntarily, decrease any services or increase the rent where the landlord's dominant intent is retaliation against a renter for the renter's assertion or exercise of rights under this Ordinance. Such retaliation shall be a defense to an eviction action, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief. In an action by or against a tenant, evidence of the assertion or exercise by the tenant of rights under this Ordinance within six months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the Court must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence. A tenant may assert retaliation affirmatively or as a defense to the landlord's action without the aid of the presumption.

Section 11. CRIMINAL PENALTIES.

It shall be unlawful for any person willfully to violate any provision or to fail to comply with any of the requirements of this Ordinance. Any person violating any provision of this Ordinance, or knowingly and intentionally misrepresenting any fact to any officer or employee of this city in registering a rental unit hereunder, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not exceeding six months, or by both such fine and imprisonment. Each such person shall be deemed guilty of a separate offense for each day during any portion of which any violation of any of the provisions of this Ordinance is committed, continued or permitted by such person and shall be punishable therefor as provided for in this Ordinance.

Section 12. PARTIAL INVALIDITY.

If any provision of this Ordinance or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this Ordinance are severable.

Section 13. NONWAIVERABILITY.

Any provision in a rental agreement which waives or modifies any provision of this Ordinance is contrary to public policy and void.

Section 14. CONSTRUCTION.

This Ordinance shall be read and interpreted in harmony with the Renter Property Tax Relief Ordinance of 1978 and shall not be construed to amend, nullify, or abridge the provisions of the Renter Property Tax Relief Ordinance of 1978.

Section 15. EFFECTIVE DATE.

This Ordinance shall take effect in the event that Ordinance No. 5210-N.S., (Adopting a Rent Registration and Temporary Rent Stabilization Program) is suspended from going into operation under the provisions of Section 93 of the Charter of the City of Berkeley.

Section 16. EXPIRATION DATE.

The expiration date of this Ordinance shall be June 30, 1980. The June 30, 1980 expiration date of this Ordinance shall not constitute a bar to the pursuit of remedies authorized under this Ordinance, to the commencement or continuation of civil or criminal judicial proceedings instituted in regard to any act in violation of this Ordinance, or to the assertion of any defense under this Ordinance.

Section 17. POSTING.

Copies of this Bill are hereby ordered published by posting with the vote thereon for two (2) days at the ten (10) prominent places in the City of Berkeley as designated by Chapter 1.08 of the Berkeley Municipal Code.

At a regular meeting of the Council of the City of Berkeley, held on the twenty-seventh day of November, 1979, this Bill was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Davis, Denton, Fukson, McDonald, and President Newport.

Noes: None.

Abstaining: Councilmember Feller.

Not Voting: Councilmember Dean.

Absent: Councilmembers Hone and Segesta.

ATTEST: ELIZABETH J. BRICKELL
Deputy City Clerk and Clerk of the
Council

In effect: December 30, 1979

AMENDING SECTIONS 7 AND 11 OF ORDINANCE NO. 5212-N.S. (ADOPTING A TEMPORARY RENT STABILIZATION PROGRAM.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Sections 7 and 11 of Ordinance No. 5212-N.S. (Adopting a Temporary Rent Stabilization Program) are hereby amended to read as follows:

Section 7. RENT INCREASE ALLOWED.

a. A landlord may charge a rent greater than the rent allowed under Section 6 of this Ordinance, subject to the limitation contained in subsection c. of this Section, if the increased rent represents increased costs actually paid by the landlord after the effective date of this Ordinance, providing that such increased costs had not already been the basis of a rent increase allowed under the Renter Property Tax Relief Ordinance of 1978. Such increased costs must be related to the rental unit on which the increased rent is charged and are limited to:

(1) increases in taxes and/or fees related to the operation of the property except for State and Federal personal and corporate taxes;

(2) increases in insurance premiums for the same type of coverage previously held on the property, and for new coverage required by law or the lenders;

(3) unavoidable increases in maintenance and operating expenses, including increases in the costs of utilities provided to the property at the owner's expense; and

(4) increased costs of substantial rehabilitation or capital improvements undertaken with the informed consent of all tenants in the property or when such rehabilitation or improvements are undertaken as required to bring the property into compliance with the implied warranty of habitability and applicable housing codes, provided that such costs are apportioned over a good faith estimate of the life of such rehabilitation or improvements.

(5) In determining increased costs which allow for increased rent under this Section, the landlord shall compare costs for the 1980 period during which it is claimed costs have increased to the related costs in the relevant 1979 period. In making this comparison, the costs shall be appropriately apportioned over the time period to which they apply.

b. A landlord wishing to increase rents to cover increased costs under this Section must notify tenants in writing of such rent increase and provide a clear financial statement which explains and documents the increased costs which necessitate the rent increase at least 30 days in advance of such rent increase.

Receipts substantiating the financial statement provided for in this Section shall be provided by the landlord within 14 days from the date of request if so requested.

c. Rent increases allowed by this Section shall not exceed during the term of this Ordinance a total, combined maximum amount of five percent (5%) of the lawful rent in effect on December 30, 1979.

Section 11. CRIMINAL PENALTIES.

It shall be unlawful for any person willfully to violate any provision or to fail to comply with any of the requirements of this Ordinance. Any person violating any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not exceeding six months, or by both such fine and imprisonment. Each such person shall be deemed guilty of a separate offense for each day during any portion of which any violation of any of the provisions of this Ordinance is committed, continued or permitted by such person and shall be punishable therefor as provided for in this Ordinance.

Section 2. Copies of this Bill are hereby ordered published by posting with the vote thereon for two (2) days at the ten (10) prominent places in the City of Berkeley as designated by Chapter 1.08 of the Berkeley Municipal Code.

At a regular meeting of the Council of the City of Berkeley, held on the eleventh day of December, 1979, this Bill was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Davis, Dean, Denton, Feller, Fukson, McDonald, and President Newport.

Noes: None.

Abstaining: Councilmember Hone.

Absent: Councilmember Segesta.

ATTEST: EDYTHE CAMPBELL
City Clerk and Clerk of the Council

In effect: February 7, 1980

REPEALING SECTION 11 OF ORDINANCE NO. 5212-N.S. -- TEMPORARY RENT STABILIZATION PROGRAM.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 11 of Ordinance No. 5212-N.S. -- Temporary Rent Stabilization Program -- regarding criminal penalties is hereby repealed.

Section 2. This Ordinance, being an urgency measure adopted pursuant to Section 93 of the City Charter, shall be and is hereby effective immediately upon a 7/9ths vote of the City Council.

Section 3. Copies of this Bill are hereby ordered published in a manner designed to apprise all concerned persons of the existence of same.

At a regular meeting of the Council of the City of Berkeley, held on the eleventh day of June, 1981, this Ordinance was finally adopted by the following vote:

Ayes: Councilmembers Bach, Dean, Denton, Feller, Sweeney, Washburn, and President Newport.

Noes: None.

Absent: Councilmembers Fukson and McDonald.

ATTEST: EDYTHE CAMPBELL
City Clerk and Clerk of the Council

In effect: June 11, 1981

ADOPTING TEMPORARY EVICTION CONTROLS.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. TITLE.

This Ordinance shall be known as the Eviction Controls Ordinance.

Section 2. FINDINGS.

a. The Housing Element of the Berkeley Master Plan of 1977

states that:

(1) Berkeley residents have the right to decent housing in pleasant neighborhoods which meet standards of adequacy at a range of prices they can afford. (Goal 1)

(2) Existing housing should be maintained and improved.
(Goal 2)

(3) Berkeley should have an adequate supply of housing throughout the City for persons with special needs. (Goal 3)

(4) All residents should have equal access to housing opportunities, financing and insurance on a non-discriminatory basis. (Goal 4)

b. On June 6, 1972, the electorate of the City of Berkeley passed a Rent Control Charter Amendment that was later voided by the California Supreme Court as being unconstitutional.

c. On June 5, 1973, the City Council declared the existence of a housing emergency in the City of Berkeley, based upon the Council's finding of a pattern of steadily rising rents, a shortage of decent housing and an increased deterioration of the existing housing stock in the City.

d. On November 7, 1978, the electorate of the City of Berkeley passed a Renter Property Tax Relief Ordinance.

e. On October 25, 1979, the Berkeley City Council, Berkeley

Housing Authority, the Berkeley Housing Advisory and Appeals Board, and members of the City's administrative staff held a public workshop regarding the current housing conditions in Berkeley.

f. On October 30, 1979, January 26, 1980 and February 21, 1980, the Berkeley City Council held public hearings at which members of the public expressed their views regarding current housing conditions in Berkeley and legislative proposals for rent stabilization and eviction controls.

g. The most significant provisions of the 1978 Renter Property Tax Relief Ordinance expired on December 30, 1979.

h. On November 27, 1979, the Berkeley City Council passed an ordinance establishing a Temporary Rent Stabilization Program, effective until June 30, 1980.

i. On March 4, 1980, the Berkeley City Council voted to present to the voters of the City of Berkeley for their consideration and approval an Ordinance adopting a Rent Stabilization and Eviction for Good Cause Program.

Section 3. PURPOSE.

The purpose of this Ordinance is to protect tenants from arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped, and the aged.

Section 4. DEFINITIONS.

a. HOUSING SERVICES: Housing services include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, tele-

phone, parking and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

b. LANDLORD: An owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative, or successor of any of the foregoing.

c. RENT: The consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

d. RENTAL AGREEMENT: An agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.

e. RENTAL UNIT: Any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-N.S.), located in the City of Berkeley, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.

f. PROPERTY: A parcel of real property which is assessed and taxed as an undivided whole.

g. TENANT: Any renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

h. SKILLED NURSING FACILITY: A health facility or a distinct

part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24 hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing through which services required by the patients, but not regularly provided within the facility can be obtained promptly when needed.

i. HEALTH FACILITY: Any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24 hour stay or longer.

j. RECOGNIZED TENANT ORGANIZATION: Any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company, agent or landlord, which requests to be so designated.

Section 5. APPLICABILITY.

This Ordinance shall apply to all real property which is being rented or is available for rent for residential use in whole or in part, except for the following:

a. Rental units which are owned by any government agency other than the Berkeley Housing Authority, except as this Ordinance may be preempted by HUD Regulation or state and/or federal law.

b. Rental units which are rented primarily to transient guests for a period of less than fourteen (14) days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses.

c. Rental units in nonprofit cooperatives owned and controlled

by a majority of the residents.

d. Rental units in any hospital, skilled nursing facility, health facility, asylum, or nonprofit home for the aged.

e. Rental units in a residential property which is divided into a maximum of four (4) units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (5.e.) shall be limited to rental units that would have been exempt under the provisions of this Ordinance had this Ordinance been in effect on December 31, 1979.

f. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

g. For the purposes of Subsections 5.e. and 5.f., the term landlord shall be defined only as the owner of record holding at least a fifty (50) percent interest in the property.

Section 6. GOOD CAUSE REQUIRED FOR EVICTION.

a. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this Ordinance unless said landlord shows the existence of one of the following grounds:

(1) The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of State or local law, unless the tenant has withheld rent pursuant to applicable law.

(2) The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement.

(3) The tenant has wilfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after writ-

ten notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.

(4) The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.

(5) The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises.

(6) The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

(7) The landlord after having obtained all necessary permits from the City of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises. Where the landlord recovers possession under this Subsection 6.a.(7), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work.

(8) The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

(9) The landlord seeks in good faith to recover possession for his or her own use or occupancy as his or her principal residence, or for the use and occupancy as a principal residence by the landlord's spouse or by the landlord's or the landlord's spouse's child, parent, brother, sister, grandparents

or grandchildren. For the purposes of this subsection 6.a.(9), the term landlord shall be defined as the owner of record holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record. The landlord may not recover possession under this subsection 6.a.(9) if a comparable unit is already vacant and available in the property.

(10) A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenant.

b. A landlord's failure to specify good cause as listed above in Subsections 1 through 10 of Section 6.a. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this Ordinance.

c. In any action to recover possession of a rental unit covered by the terms of this Ordinance, except an action to recover possession under Subsections 6.a.(7) and 6.a.(8), a landlord shall allege substantial compliance with the implied warranty of habitability and compliance with Ordinance No. 5212-N.S. of the City of Berkeley.

Section 7. RETALIATION PROHIBITED.

No landlord may threaten to bring, or bring, an action to recover possession, cause the tenant to quit the unit involuntarily, decrease any services or increase the rent where the landlord's intent is retaliation against a tenant for a tenant's assertion or exercise of rights under this Ordinance or Ordinance No. 5212-N.S. of the City of Berkeley. Such retaliation shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief. In an action by or against a tenant, evidence of the assertion or exercise by the tenant

of rights under this Ordinance or Ordinance No. 5212-N.S. within six months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the Court must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence. A tenant may assert retaliation affirmatively or as a defense to the landlord's action without the aid of the presumption.

Section 8. REMEDIES.

a. If it is shown in the appropriate court that the event which the landlord claims as grounds to recover possession under Subsection 6.a.(7), Subsection 6.a.(8), Subsection 6.a.(9), or Subsection 6.a.(10) is not initiated within two months after the tenant vacates the unit, or it is shown the landlord's claim was false or in bad faith, the tenant shall be entitled to regain possession and to actual damages. If the landlord's conduct was willful, the tenant shall be entitled to damages in an amount of \$750 or three times the actual damages sustained, whichever is greater.

b. The City Attorney may bring an action for injunctive relief on behalf of the City or on behalf of tenants seeking compliance by landlords with this Ordinance.

Section 9. PARTIAL INVALIDITY.

If any provision of this Ordinance or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this Ordinance are severable.

Section 10. NONWAIVERABILITY.

Any provision in a rental agreement which waives or modifies any provision of this Ordinance is contrary to public policy and void.

Section 11. CONSTRUCTION.

This Ordinance shall be read and interpreted in harmony and in conjunction with Ordinance No. 5212-N.S. of the City of Berkeley Adopting a Temporary Rent Stabilization Program.

Section 12. EXPIRATION DATE.

The expiration date of this Ordinance shall be June 30, 1980. The June 30, 1980 expiration date of this Ordinance shall not constitute a bar to the pursuit of remedies authorized under this Ordinance, to the commencement or continuation of civil or criminal judicial proceedings instituted in regard to any act in violation of this Ordinance, or to the assertion of any defense under this Ordinance.

Section 13. POSTING.

Copies of this Bill are hereby ordered published by posting with the vote thereon for two (2) days at the ten (10) prominent places in the City of Berkeley as designated by Chapter 1.08 of the Berkeley Municipal Code.

At a regular meeting of the Council of the City of Berkeley, held on the fourth day of March, 1980, this Bill was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Davis, Denton, Fukson, McDonald, and President Newport.

Noes: Councilmembers Dean, Feller, Hone and Segesta.

Absent: None.

ATTEST: EDYTHE CAMPBELL
City Clerk and Clerk of the Council

In effect: April 10, 1980

any person not a citizen of the United States of America, or any person who has ever been convicted of a felony, or any person who is a member of any group or organization whose principles, ideals and practices are not in keeping with the best interests of the United States of America or any political subdivision thereof. (Ord. 2878-NS § 10, 1947.)

13.72.110 Shooting range—Use by minors prohibited.

No shooting shall be done on any such range by any minor unless directly supervised by an adult who possesses qualifications such as would allow his being issued a permit for a shooting range. (Ord. 2878-NS § 11, 1947.)

13.72.120 Shooting range—City liability limitations.

The issuance of such permit shall not be an assumption of responsibility on the part of the city or any employee thereof for civil damages which may accrue from accidents to persons or property arising from the use, legal or illegal, of such range. (Ord. 2878-NS § 8, 1947.)

13.72.130 Violation—Penalty.

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable as set forth in Chapter 1.20 of this code. (Ord. 2878-NS § 13, 1947.)

IX. RENT STABILIZATION

Chapter 13.76

RENT STABILIZATION AND EVICTION FOR GOOD CAUSE PROGRAM¹¹

Sections:

- 13.76.010 Title.
- 13.76.020 Findings.
- 13.76.030 Purpose.
- 13.76.040 Definitions.
- 13.76.050 Applicability.

- 13.76.060 Rent stabilization board.
- 13.76.070 Security deposits.
- 13.76.080 Rent registration.
- 13.76.090 Use and confidentiality of information submitted to board.
- 13.76.100 Establishment of base rent ceiling and posting.
- 13.76.110 Annual general adjustment of rent ceilings.
- 13.76.120 Individual adjustments of rent ceilings.
- 13.76.130 Good cause required for eviction.
- 13.76.140 Retaliation prohibited.
- 13.76.150 Remedies.
- 13.76.160 Partial invalidity.
- 13.76.170 Nonwaiverability.
- 13.76.180 Judicial review.
- 13.76.190 Criminal penalties.

13.76.010 Title.

This chapter shall be known as the Rent Stabilization and Eviction for Good Cause Ordinance. (Ord. 5467-NS § 1, 1982; Ord. 5261-NS § 1, 1980.)

13.76.020 Findings.

- A. The Housing Element of the Berkeley Master Plan of 1977 states that:
 - 1. Berkeley residents have the right to decent housing in pleasant neighborhoods which meet standards of adequacy at a range of prices they can afford. (Goal 1)
 - 2. Existing housing should be maintained and improved. (Goal 2)
 - 3. Berkeley should have an adequate supply of housing throughout the city for persons with special needs. (Goal 3)
 - 4. All residents should have equal access to housing opportunities, financing and insurance on a non-discriminatory basis. (Goal 4)
- B. On June 6, 1972, the electorate of the city of Berkeley passed a rent control charter amendment that was later voided by the California Supreme Court as being unconstitutional.
- C. On June 5, 1973, the city council declared

the existence of a housing emergency in the city of Berkeley, based upon the council's finding of a pattern of steadily rising rents, a shortage of decent housing and an increased deterioration of the existing housing stock in the city.

- D. On November 7, 1978, the electorate of the city of Berkeley passed a renter property tax relief ordinance.
- E. On October 25, 1979, the Berkeley City Council, Berkeley Housing Authority, the Berkeley Housing Advisory and Appeals Board, and members of the city's administrative staff held a public workshop regarding the current housing conditions in Berkeley.
- F. On October 30, 1979, January 26, 1980 and February 21, 1980, the Berkeley City Council held public hearings at which members of the public expressed their views regarding current housing conditions in Berkeley and legislative proposals for rent stabilization and eviction controls.
- G. The most significant provisions of the 1978 Renter Property Tax Relief Ordinance expired on December 30, 1979.
- H. On November 27, 1979, the Berkeley City Council passed an ordinance establishing a temporary rent stabilization program, effective until June 30, 1980.

(Ord. 5467-NS § 2, 1982; Ord. 5261-NS § 2, 1980.)

13.76.030 Purpose.

The purposes of this chapter are to regulate residential rent increases in the city of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the city of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the city with regard to low and fixed income persons, minorities, students, handicapped, and the aged. (Ord. 5467-NS § 3, 1982; Ord. 5261-NS § 3, 1980.)

13.76.040 Definitions.

- A. "Board" refers to the appointed rent stabilization board established by this chapter.

- B. "Commissioners" means the members of the board who are denominated commissioners.
- C. "Housing services" include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, telephone, parking and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.
- D. "Landlord" means an owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.
- E. "Rent" means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.
- F. "Rental agreement" means an agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.
- G. "Rental unit" means any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/ Work Ordinance No. 5217-NS), located in the city of Berkeley, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.
- H. "Property" means a parcel of real property which is assessed and taxed as an undivided whole.
- I. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group

of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

- J. "Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides twenty four hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility can be obtained promptly when needed.
 - K. "Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a twenty four hour stay or longer.
 - L. "Recognized tenant organization" means any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company, agent or landlord, which requests to be so designated.
 - M. "Rent ceiling" means the maximum allowable rent which a landlord may charge on any rental unit covered by this chapter.
 - N. "Base rent ceiling" means the maximum allowable rent established under Section 13.76.100 of this chapter.
 - O. "Fees" means for the purpose of this chapter, a charge fixed by law for services of public officers or for use of a privilege under control of government.
- (Ord. 5467-NS § 4, 1982; Ord. 5261-NS § 4, 1980.)

13.76.050 Applicability.

This chapter shall apply to all real property

which is being rented or is available for rent for residential use in whole or in part, except for the following:

- A. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.
- B. Rental units which are rented primarily to transient guests for use or occupancy less than fourteen consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen days or less shall not by itself exempt any unit from coverage by this chapter.
- C. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.
- D. Rental units leased by the Berkeley Housing Authority under the Section 23 program (42 U.S.C. Section 1421b) or rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f). However, except as may be preempted by state or federal law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.
- E. Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.
- F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979.

After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050 F). Rental units which become non-exempt under this provision shall have the provisions of subsections 13.76.080I and 13.76.100C.

- G. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.
- H. For the purposes of subsections 13.76.050 F. and G., the term landlord shall be defined only as the owner of record holding at least fifty percent interest in the property.
- I. Newly constructed rental units which are completed and offered for rent for the first time after the effective date of this chapter, provided that such new units were not created as a result of rehabilitation or conversion as opposed to new construction. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

(Ord. 5476-NS § 5, 1982; Ord. 5261-NS § 5, 1980.)

13.76.060 Rent stabilization board.

- A. Composition. There shall be in the city of Berkeley a rent stabilization board; the board shall consist of nine appointed commissioners. The board shall elect annually as chairperson one of its members to serve in that capacity.
- B. Eligibility. Residents of the city of Berkeley are eligible to serve as commissioners on the board.
- C. Full disclosure of holdings. All commissioners shall file with the city clerk a verified statement listing all of their interests and

dealings in real property, including but not limited to ownership, sale, management, transfer or exchange, and interests in entities whose primary purpose is the ownership, sale, management, transfer or exchange of real property during the previous three years. Such statements shall be made available for public inspection.

- D. Appointment of Commissioners. Commissioners shall be appointed by members of the Berkeley City Council in accordance with the Fair Representation Ordinance (No. 4780-N.S.), within thirty days after the adoption of this chapter.
- E. Term of Office. Commissioners' terms of office shall be in accordance with the Fair Representation Ordinance (City of Berkeley Ordinance No. 4780-N.S.).
- F. Powers and Duties. The board shall have the following powers and duties:
 1. Set the rent ceilings for all rental units.
 2. Require registration of all rental units under Section 13.76.080.
 3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
 4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.
 5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.
 6. To issue orders, rules and regulations, conduct hearings and charge fees as set forth below.
 7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
 8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this chapter.
 9. Request the city council to remove rent controls under Section 13.76.060 Q.
 10. Administer oaths and affirmations and subpoena witnesses and relevant documents.
 11. Establish rules and regulations for settling civil claims under Section 13.76.150.

12. Seek injunctive relief under Section 13.76.150.
 13. Pursue civil remedies in courts of appropriate jurisdiction.
 14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this chapter.
 15. Hold public hearings.
 16. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.
 17. Except as provided in Section 13.76.060 N. of this chapter, the board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley.
- G. Rules and Regulations. The board shall issue and follow such rules and regulations, including those which are contained in this chapter, as will further the purposes of this chapter. The board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the city of Berkeley.
- All rules and regulations and relevant documents explaining the decisions, orders, and policies of the board shall be kept in the board's office and shall be available to the public for inspection and copying.
- The board shall publicize this chapter so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this chapter. The board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this chapter. The brochure shall be made available to the public.
- H. Meetings. The board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the commissioners of the board. The board shall hold its initial meeting no later than July 15, 1980.
 - I. Quorum. Five commissioners shall constitute a quorum for the board.
 - J. Voting. The affirmative vote of five commissioners of the board is required for a decision, including all motions, rules, regulations, and orders of the board.
 - K. Compensation. The rent stabilization board shall be a working board. In order to compensate commissioners for their time and work performed as required by this chapter, commissioners shall receive five dollars per hour, but in no case shall compensation for any one commissioner exceed three thousand dollars in the first twelve month period or in any subsequent annual period that the board is in operation for services rendered. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the board and filed with the city clerk. Upon request by the board the city council may annually adjust the hourly compensation rate and the maximum annual sum received by the commissioners.
 - L. Dockets. The board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.
 - M. Vacancies. If a vacancy shall occur on the board, a qualified person to fill such vacancy shall be appointed in accordance with this chapter and the Fair Representation Ordinance (No. 4780-N.S.)
 - N. Financing. The board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley except as stated in this subsection, by charging landlords an annual registration fee of twelve dollars per unit, per year in the first year of operation. After the first year, upon request by the board the city council may make reasonable annual adjustments in the fee. The board is also empowered to request and receive funding when and if necessary, from any available source, except the city of Berkeley's general fund, for its reasonable and necessary expenses, including but not limited to salaries and all other operating expenses.
- Notwithstanding the preceding provision of this section, the city council of the city of Berkeley shall appropriate as a loan to the rent stabilization board sufficient funds for the reasonable and necessary expenses of the board during the six month period following the adoption of this chapter, said funds to be repaid to the city by the rent stabilization board within one year's period following the adoption of this chapter.

- O. Staff. The city manager is authorized to employ and pay staff for the board, including hearing examiners and inspectors, as may be necessary to perform the board's functions efficiently in order to fulfill the purposes of this chapter.
- P. Registration. The board shall require the registration of all rental units covered by this chapter as provided for in Section 13.76.080. The board may also require landlords to provide current information supplementing their registration statements.
- Q. Decontrol. If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this subsection (13.76.060 Q.) coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this subsection (13.76.060 Q.) the board shall hold at least two public hearings.
- R. Conflict of Interest. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.
(Ord. 5467-NS § 6, 1982: Ord. 5261-NS § 6, 1980.)

13.76.070 Security deposits.

Any payment or deposit of monies by the tenant, the primary function of which is to

secure the performance of a rental agreement or any part of such agreement, including an advance payment of rent, shall be placed by the landlord, in an interest bearing account at an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation until such time as it is returned to the tenant or entitled to be used by the landlord. The interest earned by said payment or deposit on monies shall be returned along with the appropriate part of the principal to the tenant upon departure from the premises. (Ord. 5467-NS § 7, 1982: Ord. 5261-NS § 7, 1980.)

13.76.080 Rent registration.

- A. The board shall require all landlords subject to the provisions of this chapter to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.
- B. Landlords shall provide in their initial rent registration statement the following information:
 1. The address of each rental unit;
 2. The name and address of the landlord(s) and the managing agent, if any;
 3. The date on which the landlord received legal title to or equitable interest in the rental unit;
 4. The housing services provided for the rental unit;
 5. The rent in effect on June 6, 1978;
 6. The rent in effect on December 30, 1979;
 7. The base rent ceiling;
 8. The lowest rent in effect between June 6, 1978, and the date of the adoption of this chapter.
 9. The amount of any deposits or other monies in addition to periodic rent demanded or received by the landlord in connection with the use or occupancy of the rental unit;

10. Whether the rental unit was vacant or occupied on May 31, 1980.
11. Rent in effect on December 31, 1982.
- C. All rent registration statements provided by landlords in accordance with this chapter shall include an affidavit signed by the landlord declaring under penalty of perjury that the information provided in the rent registration statement is true and correct.
- D. The first annual registration fee of twelve dollars per unit shall be paid by the landlords to the board no later than September 1, 1980. Subsequent annual registration fees set in accordance with Section 13.76.060 N. of this chapter shall be paid no later than September 1 of each year.
- E. The board shall provide forms for the registration information required by this section and shall make other reasonable efforts to facilitate the fulfillment of the requirements set forth in this section.
- F. Every annual registration fee required by this chapter which is not paid on or before September 1 is declared delinquent, and the board shall add to said registration fee and collect a penalty of one hundred percent of the fee so delinquent in addition to the fee. Every sixty days that the fee and penalty remain delinquent, the penalty shall be increased by one hundred percent of the original fee. The board may waive the penalty if payment is made within thirty days of the original due date.
A landlord may request the board to waive the penalty if he/she can show good cause for the delinquent payment.
- G. The amount of any registration fee and penalty imposed by the provisions of this chapter shall be deemed a debt to the city.
- H. Within thirty days after the filing of a rent registration statement, the board shall provide a true and correct copy of said statement to the occupant of the respective unit.
- I. Landlords of formerly exempt units shall register within sixty days of coming under coverage of this chapter. The registration fee for this first-time registration shall be prorated based upon the number of months remaining to the next September 1 annual registration deadline.
- J. No landlord shall be deemed to be in com-

pliance with this section with respect to a given unit until the landlord has completed registration for all covered units in the same property. Registration shall be deemed complete when all required information has been provided and all outstanding fees and penalties have been paid.

- K. Registration fees shall not be passed along to the tenants without the express, prior approval of the board. Under no circumstances shall penalties be passed along to tenants.

(Ord. 5467-NS § 8, 1982; Ord. 5261-NS § 8, 1980.)

13.76.090 Use and confidentiality of information submitted to board.

- A. All information and forms required by this chapter and submitted to the board shall not be used by any other governmental unit of the city of Berkeley for the enforcement of the city of Berkeley ordinances other than this chapter.
- B. The board shall adopt rules and regulations providing for the confidentiality of information submitted to the board in support of a petition for an individual rent ceiling adjustment under Section 13.76.120 of this chapter when such confidentiality is deemed necessary by the board.

(Ord. 5467-NS § 9, 1982; Ord. 5261-NS § 9, 1980.)

13.76.100 Establishment of base rent ceiling and posting.

- A. Base Rent Ceiling. Upon adoption of this chapter, no landlord shall charge rent for any rental unit covered by the terms of this chapter affecting rents in an amount greater than the lawful rent which was actually due and payable on, or last preceding, May 31, 1980, under the periodic term of the rental agreement, in accordance with the provisions of the Temporary Rent Stabilization Ordinance, No. 5212-N.S., except as permitted by the board under Sections 13.76.110 and 13.76.120 of this chapter. Such lawful rent in effect on May 31, 1980, is the base rent ceiling and is a reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and

13.76.120. For such rental units where no rent was in effect on May 31, 1980, the base rent ceiling shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date, the base rent ceiling shall be a good faith estimate of the median rent in effect for comparable units in the city of Berkeley on May 31, 1980.

- B. Posting. The board may establish reasonable rules and regulations for the posting of rent ceiling and other relevant information to further the purposes of this chapter.
- C. Previously Exempt Units. For rental units specified in Section 13.76.050 F., the base rent ceiling shall be the rent in effect on December 31, 1981. For such rental units where no rent was in effect on December 31, 1981, the base rent ceiling shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date. For such rental units where no periodic rent was in effect on December 31, 1981, or during the six months preceding that date, the base rent ceiling shall be a good faith estimate of the median rent in effect for comparable units, located in the same census tract, and similar in age, size, maintenance, upkeep and services.

(Ord. 5467-NS § 10, 1982; Ord. 5261-NS § 10, 1980.)

13.76.110 Annual general adjustment of rent ceilings.

- A. Once each year, the board shall consider setting and adjusting the rent ceiling for all rental units covered by this chapter in general and/or particular categories of rental units covered by this chapter deemed appropriate by the board. The board shall hold at least two public hearings prior to making any annual general adjustment of the rent ceilings. The board shall publish and publicize notices of the date, time, and place of the public hearings at least thirty days prior to the hearing date. The two required public hearings shall be conducted and the annual general adjustment shall be set between September 1 and October 31, of each year. The annual adjustment shall become effective the following January 1.

- B. In making annual general adjustments of the rent ceiling, the board shall:

1. Adjust the rent ceiling upward by granting those landlords who pay for utilities a utility adjustment for increases in the city of Berkeley for utilities.
2. Adjust the rent ceiling upward by granting landlords a property tax, maintenance and operating expense increase adjustment (exclusive of utilities) for increases in the city of Berkeley for property taxes and maintenance and operating expenses.
3. Adjust the rent ceiling downward by requiring landlords to decrease rents for any decreases in the city of Berkeley for property taxes.
4. Adjust the rent ceiling downward by requiring landlords who pay for utilities to decrease rents for any decreases in the city of Berkeley for utilities.

In adjusting rent ceilings under this subsection, the board shall adopt a formula or formulas of general application. This formula will be based upon the annual rent registration forms, surveys, information and testimonies presented at public hearings, and other available data indicating increases or decreases in the expenses relating to the rental housing market in the city of Berkeley set forth in this subsection. For maintenance and operating expense adjustments, the board may also use survey data from surrounding communities where appropriate. The board shall make no more than one annual adjustment of rent ceilings per rental units per year.

Adoption of a formula greater than forty-five percent of the increase in the Consumer Price Index for the twelve months ending the previous June 30 shall require the affirmative vote of six commissioners, other provisions notwithstanding. Adoption of such a formula shall be a specific and special exception to the requirement of only five affirmative votes to make a decision. For the purposes of this subsection, the Consumer Price Index shall mean the Consumer Price Index for all urban consumers in San Francisco-Oakland, all items (1967 equals 100), as reported by the Bureau of Labor

Statistics of the U.S. Department of Labor, as it pertains to the city of Berkeley.

- C. An upward general adjustment in rent ceilings does not automatically provide for a rent increase. Allowable rent increases pursuant to a general upward adjustment shall become effective only after the landlord gives the tenant at least a thirty days written notice of such rent increase and the notice period expires.
- D. If the board makes a downward general adjustment in the rent ceilings, landlords of rental units to which this adjustment applies shall give tenants of such rental units written notice of the rent decrease to which they are entitled. Such rent decreases shall take effect not later than thirty days after the effective date set by the board for the downward general adjustment.
- E. If the maximum allowable rent specified under this chapter for a rental unit is greater than the rent specified for such unit in the rental agreement, the lower rent specified in the rental agreement shall be the maximum allowable rent until the rental agreement expires. If the maximum allowable rent specified under this chapter for a rental unit is less than the rent specified for such unit in the rental agreement, the lower rent specified under this chapter shall be the maximum allowable rent.
- F. No rent increase pursuant to an upward general adjustment of a rent ceiling shall be effective if the landlord:
 - 1. Has continued to fail to comply, after order of the board, with any provisions of this chapter, and/or orders or regulations issued thereunder, or
 - 2. Has failed to bring the rental unit into compliance with the implied warranty of habitability.
 - 3. Has failed to make repairs as ordered by the housing inspection services of the city of Berkeley, or
 - 4. Has failed to completely register by September 1, except as provided in subsection G below.
- G. The amount of an upward general adjustment for which a landlord shall be eligible shall decrease by ten percent per month for each

month beyond December 1 for which the landlord fails to register.

- H. A landlord who is ineligible to raise rents under an upward general adjustment for an entire calendar year shall not be eligible to raise rents under that particular general adjustment in future years.

(Ord. 5467-NS § 11, 1982; Ord. 5261-NS § 11, 1980.)

13.76.120 Individual adjustments of rent ceilings.

- A. Petitions. Upon receipt of a petition by a landlord and/or tenant, the rent ceiling of individual controlled rental units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this section. The petition shall be on the form provided by the board. The board may set a reasonable per unit fee based upon the expenses of processing the petition to be paid by the petitioner at the time of filing. No petition shall be filed before September 1, 1980. Notwithstanding any other provision of this section, the board or hearing examiner may refuse to hold a hearing and/or grant an individual rent ceiling adjustment for a rental unit if an individual hearing has been held and decision made with regard to the rent ceiling for such unit within the previous six months.
- B. Hearing Procedure. The board shall enact rules and regulations governing hearings and appeals of individual adjustments of rent ceilings which shall include the following:
 - 1. Hearing Examiner. A hearing examiner appointed by the board shall conduct a hearing to act upon the petition for individual adjustments of rent ceilings and shall have the power to administer oaths and affirmations.
 - 2. Notice. The board shall notify the landlord if the petition was filed by the tenant, or the tenant, if the petition was filed by the landlord, of the receipt of such a petition and a copy thereof.
 - 3. Time of Hearing. The hearing officer shall notify all parties as to the time, date and place of the hearing.

4. Records. The hearing examiner may require either party to an individual rent ceiling adjustment hearing to provide it with any books, records and papers deemed pertinent in addition to that information contained in registration statements. The hearing examiner shall conduct a current building inspection and/or request the city to conduct a current building inspection if the hearing examiner finds good cause to believe the board's current information does not reflect the current condition of the controlled rental unit. The tenant may request the hearing examiner to order such an inspection prior to the date of the hearing. All documents required under this section shall be made available to the parties involved prior to the hearing at the office of the board. In cases where information filed in a petition for an individual rent ceiling adjustment or in additional submissions filed at the request of the hearing examiner is inadequate or false, no action shall be taken on said petition until the deficiency is remedied.
5. Open Hearings. All individual rent ceiling adjustment hearings shall be open to the public.
6. Right of Assistance. All parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, recognized tenant organization representatives or any other persons designated by said parties.
7. Hearing Record. The board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions, orders and/or rulings; all final decisions, orders and/or rulings, and the reasons for each final decision, order and/or ruling. Any party may have the proceeding tape recorded or otherwise transcribed at his or her own expense.
8. Quantum of Proof and Notice of Decision. No individual rent ceiling adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceedings shall also be notified of their right to and the time limit for any appeal allowed by the board and/or to judicial review of the decision pursuant to this section and Section 13.76.180 of this chapter.
9. Consolidation. All landlord petitions pertaining to tenants in the same building shall be consolidated for hearing, and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.
10. Appeal. Any person aggrieved by the decision of the hearing examiner may appeal to the board or to any appeals panel of the board established by the board, so long as such panel has at least three commissioners. On appeal the board or panel shall affirm, reverse, remand, or modify the decision of the hearing examiner. The board or panel may conduct a new (de novo) hearing or may act on the basis of the record before the hearing examiner without holding a hearing. An appeal to the board shall be filed no later than thirty days after receipt of the notice of the decision of the hearing examiner. The board may set a reasonable appeal fee to be paid by the appellant at the time of filing the appeal.
11. Finality of Decision. The decision of the hearing examiner shall be the final decision of the board in the event of no appeal to the board. The decision of the

hearing examiner shall not be stayed pending appeal; however, in the event that the board or panel reverses or modifies the decision of the hearing examiner, the board shall order the appropriate party to make retroactive payments to restore the parties to the position they would have occupied had the hearing examiner's decision been the same as that of the board's.

12. Time for Decision. The rules and regulations adopted by the board shall provide for final board action on any individual rent adjustment petition within one hundred and twenty days following the date of filing of the individual rent ceiling adjustment petition, unless the conduct of the petitioner or other good cause is responsible for the delay.

13. Board Action in Lieu of Reference to Hearing Examiner. The board, on its own motion or on the request of any landlord or tenant, may hold a hearing on an individual petition for a rent ceiling adjustment without the petition first being heard by a hearing examiner.

C. In making individual adjustments of the rent ceiling, the board or the hearing examiner shall consider the purposes of this chapter and shall specifically consider all relevant factors, including (but not limited to):

1. Increases or decreases in property taxes;
2. Unavoidable increases or any decreases in maintenance and operating expenses;
3. The cost of planned or completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement;
4. Increases or decreases in the number of tenants occupying the rental unit, living space, furniture, furnishings, equipment,

or other housing services provided, or occupancy rules;

5. Substantial deterioration of the controlled rental unit other than as a result of normal wear and tear;
6. Failure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health and safety codes, or the rental agreement;
7. The pattern of recent rent increases or decreases;
8. The landlord's rate of return on investment. In determining such return, all relevant factors, including but not limited to the following shall be considered: the landlord's actual cash down payment, method of financing the property, and any federal or state tax benefits accruing to landlord as a result of ownership of the property.
9. Whether or not the property was acquired or is held as a long-term or short-term investment; and
10. Whether or not the landlord has received rent in violation of the terms of this chapter or has otherwise failed to comply with the chapter.

It is the intent of this chapter that individual upward adjustments in the rent ceilings on units be made only when the landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment.

- D. No individual upward adjustment of a rent ceiling shall be authorized by the board by reason of increased interest or other expenses resulting from the landlord's refinancing the rental unit if, at the time the landlord refinanced, the landlord could reasonably have foreseen that such increased expenses could not be covered by the rent schedule then in existence, except where such refinancing is necessary for the landlord to make capital improvements which meet the criteria set forth in Section 13.76.120 C.3. This paragraph shall only apply to that portion of the increased expenses resulting from the refinancing that were reasonably foreseeable at the time of the refinancing of the rental unit and shall only apply to rental units refi-

nanced after the date of adoption of this chapter.

- E. Except for cases of individual hardship as set forth in Subsection 13.76.120 I. of this chapter, no individual upward adjustment of a rent ceiling shall be authorized by the board because of the landlord's increased interest or other expenses resulting from the sale of the property, if at the time the landlord acquired the property, the landlord could have reasonably foreseen that such increased expenses would not be covered by the rent schedule then in effect. This Subsection (13.76.120 E.) shall only apply to rental units acquired after the date of adoption of this chapter.
 - F. No upward adjustment of an individual rent ceiling shall be authorized by the board under this section if the landlord:
 - 1. Has continued to fail to comply, after order of the board, with any provisions of this chapter and/or orders or regulations issued thereunder by the board, or
 - 2. Has failed to bring the rental unit into compliance with the implied warranty of habitability.
 - G. Allowable rent increases pursuant to an individual upward adjustment of the rent ceiling shall become effective only after the landlord gives the tenant at least a thirty day written notice of such rent increase and the notice period expires.
 - H. If the board makes a downward individual adjustment of the ceiling, such rent decrease shall take effect no later than thirty days after the effective date set by the board for the downward adjustment.
 - I. No provision of this chapter shall be applied so as to prohibit the board from granting an individual rent adjustment that is demonstrated necessary by the landlord to provide the landlord with a fair return on investment.
- (Ord. 5467-NS §12, 1980.)

13.76.130 Good cause required for eviction.

- A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.
2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.
3. The tenant has wilfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.
4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.
5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises.
6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

- 7a. The landlord, after having obtained all necessary permits from the city of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.
- b. Where such repairs can be completed in a period of sixty or fewer days, and the tenant, within thirty days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.
- c. Where the landlord owns any other residential rental units in the city of Berkeley, and any such unit is vacant and available at the time of service of the written notice terminating the tenancy, or at any time thereafter until the earlier of the tenant's vacating the premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this subsection (13.76.130A.7.), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:
 - (i) To enter into a rental agreement (to be designated as a "temporary rental agreement") on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant; or
 - (ii) To enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.
- d. Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.
8. The landlord, after having obtained all necessary permits from the city of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.
9. The landlord seeks in good faith to recover possession for his/her own use and occupancy as his/her principal residence, or for the use and occupancy as a principal residence by the landlord's spouse or by the landlord's child, or parent. For the purposes of this subsection (13.76.130A.9.), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating the tenant's tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a fifty percent interest in the property and shall not include a lessor, sublessor, or agent of the owner of record. The landlord may not recover possession under this subsection (13.76.130A.9.) if a comparable unit was, at the time of the

landlord's decision to seek to recover possession of the rental unit, already vacant and available in the property, or if a comparable unit thereafter becomes vacant in the property at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available in the property within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

10. A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenants.
11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of ninety days).
- B. A landlord's failure to specify good cause as listed above in subsections 1. through 11. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter.

C. In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under subsection 13.76.130A.7., 13.76.130.A.8. or 13.76.130.A.11., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

D. The landlord shall file with the board a copy of any notice of termination, notice to quit, and/or summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.

(Ord. 5467-NS § 13, 1982; Ord. 5261-NS § 13, 1980.)

13.76.140 Retaliation prohibited.

No landlord may threaten to bring, or bring, an action to recover possession, cause the tenant to quit the unit involuntarily, serve any notice to quit or notice of termination of tenancy, decrease any services or increase the rent where the landlord's intent is retaliation against the tenant for the tenant's assertion or exercise of rights under this chapter. Such retaliation shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief. In an action by or against a tenant, evidence of the assertion or exercise by the tenant of rights under this chapter within six months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the court must find the existence of the fact presumed unless and until its non-existence is proven by a preponderance of the evidence. A tenant may assert retaliation affirmatively or as a defense to the landlord's action without the aid of the presumption regardless of the period of time which has elapsed between the tenant's assertion or exercise of rights under this chapter and the alleged act of retaliation. (Ord. 5467-NS § 14, 1982; Ord. 5261-NS § 14, 1980.)

13.76.150 Remedies.

A. For violation of Rent Ceilings or Failure to Register. If a landlord fails to register in accordance with Section 13.76.080 of this chapter, or if a landlord demands, accepts, receives or retains any payment in excess of the maximum allowable rent permitted by this chapter, a tenant may take any or all of the following actions until compliance is achieved:

1. A tenant may petition the board for appropriate relief. If the board, after the landlord has proper notice and after a hearing, determines that a landlord has willfully and knowingly failed to register a rental unit covered by this chapter or violated the provisions of Sections 13.76.100, 13.76.110 and 13.76.120 of this chapter, the board may authorize the tenant of such rental unit to withhold all or a portion of the rent for the unit until such time as the rental unit is brought into compliance with this chapter. After a rental unit is brought into compliance, the board shall determine what portion, if any, of the withheld rent is owed to the landlord for the period in which the rental unit was not in compliance. Whether or not the board allows such withholding, no landlord who has failed to comply with the chapter shall at any time increase rents for a rental unit until such unit is brought into compliance.
2. A tenant may withhold up to the full amount of his or her periodic rent which is charged or demanded by the landlord under the provisions of this chapter. In any action to recover possession based on nonpayment of rent, possession shall not be granted where the tenant has withheld rent in good faith under this section.
3. A tenant may seek injunctive relief on behalf of herself or himself to restrain the landlord from demanding or receiving any rent on the unit until the landlord has complied with the terms of this chapter.
4. A tenant may file a damage suit against the landlord for actual damages when the landlord receives or retains any rent in

excess of the maximum rent allowed under this chapter. Upon further proof of a bad faith claim by the landlord or the landlord's retention of rent in excess of the maximum rent allowed by this chapter, the tenant shall receive a judgment of up to seven hundred and fifty dollars in addition to any actual damages.

- B. For Violation of Eviction Proceedings. If it is shown in the appropriate court that the event which the landlord claims as grounds to recover possession under Subsection 13.76.130 A. 7., Subsection 13.76.130 A. 8., Subsection 13.76.130 A. 9., or Subsection 13.76.130 A. 10. is not initiated within two months after the tenant vacates the unit, or it is shown the landlord's claim was false or in bad faith, the tenant shall be entitled to regain possession and to actual damages. If the landlord's conduct was willful, the tenant shall be entitled to damages in an amount of seven hundred and fifty dollars or three times the actual damages sustained, whichever is greater.
- C. The city attorney may bring an action for injunctive relief on behalf of the city or on behalf of tenants seeking compliance by landlords with this chapter.
- D. The board may seek injunctive relief to restrain or enjoin any violation of this chapter or of the rules, regulations, orders and decisions of the board.
- E. If a tenant fails to bring a civil or administrative action within one hundred and twenty days from the date of the first occurrence of a violation of this chapter, the board may either settle the claim arising from the violation or bring such action. Thereafter, the tenant on whose behalf the board acted may not bring an action against the landlord in regard to the same violation for which the board has made a settlement or brought an action. In the event the board settles the claim it shall be entitled to retain from any payments made by the landlord, the costs it incurred in settlement, and the tenant aggrieved by the violation shall be entitled to the remainder.

(Ord. 5467-NS §15, 1982: Ord. 5261-NS §15, 1980.)

13.76.160 Partial invalidity.

If any provision of this chapter or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this chapter are severable. (Ord. 5467-NS § 16, 1982; Ord. 5261-NS § 16, 1980.)

13.76.170 Nonwaiverability.

Any provision in a rental agreement which waives or modifies any provision of this chapter is contrary to public policy and void. (Ord. 5467-NS § 17, 1982; Ord. 5261-NS § 17, 1980.)

13.76.180 Judicial review.

A landlord or tenant aggrieved by any action or decision of the board may seek judicial review in a court of appropriate jurisdiction. (Ord. 5467-NS § 18, 1982; Ord. 5261-NS § 18, 1980.)

13.76.190 Criminal penalties.

Any landlord who is found by a court of competent jurisdiction to be guilty of a willful violation of this chapter shall be subject to up to a five hundred dollar fine and/or ninety days in jail for a first offense and up to a three thousand dollar fine and/or one year in jail for any subsequent offenses. (Ord. 5467-NS § 19, 1982.)

Chapter 13.80

**ELMWOOD COMMERCIAL RENT
STABILIZATION AND EVICTION
PROTECTION PROGRAM¹²**

Sections:

- 13.80.010 Title.
- 13.80.020 Purposes.
- 13.80.030 Scope.
- 13.80.040 Definitions.
- 13.80.050 Maximum rent.
- 13.80.060 Extraordinary rent increases.
- 13.80.070 Services, lease provisions and assignments.
- 13.80.080 Dispute resolution.
- 13.80.090 Evictions.

- 13.80.100 Retaliation.
- 13.80.110 Remedies.
- 13.80.120 Waiver.
- 13.80.130 Application to pre-existing leases.
- 13.80.140 Partial invalidity.
- 13.80.150 Effective date.
- 13.80.160 Evaluation.

13.80.010 Title.

This chapter shall be called the Elmwood Commercial Rent Stabilization and Eviction Protection Ordinance. (Ord. 5468-NS § 1, 1982.)

13.80.020 Purposes.

The purposes of this chapter are to protect commercial tenants in the Elmwood district from rent increases which are not justified by landlord's cost increases; to enable those tenants to continue serving residents of the Elmwood district without undue price increases, expansion of trade (which may exacerbate parking problems), or going out of business; and to test the viability of commercial rent stabilization as a means of preserving businesses which serve the needs of local residents in Berkeley neighborhoods, outside the downtown business district. (Ord. 5468-NS § 2, 1982.)

13.80.030 Scope.

This chapter shall apply to all commercial premises (both office and retail), rented or available for rent, only in the Elmwood district of the city of Berkeley. The boundaries of this district are as follows: Stuart Street on the north, Webster Street on the south, Piedmont Avenue on the east, and Benvenue Avenue on the west. (Ord. 5468-NS § 3, 1982.)

13.80.040 Definitions.

In this chapter, the following words and phrases have the following meanings:

- A. "Landlord" means any owner, lessor, sublessor, or other person entitled to receive rent for the use or occupancy of any rental unit, or an agent thereof; provided, however, that the word "landlord" shall not include any governmental agency.
- B. "Rent" means any consideration (including any deposit, bonus, or gratuity) demanded or

received in connection with the use or occupancy of any rental unit.

- C. "Rental unit" means any property, building, structure, or part thereof, or land appurtenant thereto, which is covered by Section 13.80.030 of this chapter, together with all services connected with the use or occupancy thereof.
- D. "Services" means those services and facilities which enhance the use of the rental unit, including but not limited to repairs, replacement, maintenance, painting, heat, hot and cold water, utilities, elevator service, security devices and patrols, furnishings, storage, janitorial and landscaping services, refuse removal, insurance protection, parking spaces, and services to and facilities in common areas of the building or parcel in which the rental unit is located.
- E. "Tenant" means a tenant, subtenant, lessee, sublessee, or any other person entitled to the use or occupancy of any rental unit.
- F. "Consumer Price Index" means the All Items Consumer Price Index for All Urban Consumers, San Francisco-Oakland, California, as published by the United States Department of Labor, Bureau of Labor Statistics.

(Ord. 5468-NS § 4, 1982.)

13.80.050 Maximum Rent.

- A. No landlord of any rental unit covered by this chapter shall request, demand, receive, or retain more than the maximum rent allowed by this section. The maximum rent shall be the "base rent" plus any "allowable adjustments."
- B. Base rent. Except as provided herein, base rent shall be the lawful periodic rent in effect on October 1, 1981 (the approximate time the current campaign for commercial rent stabilization in the Elmwood district began).
 - 1. If, on October 1, 1981, the rental unit was held under a lease which provided for fixed rental payments of varying amounts (e.g., rents escalating with a Consumer Price Index), then the base rent shall be the amount of the final lawful periodic rental payment required by such lease.
 - 2. If, on October 1, 1981, the rental unit was held under a lease which provided rental payments whose amounts were de-

termined by gross sales, in whole or in part (whether or not there is a fixed minimum rent), the monthly base rent shall be the total amount of rent lawfully payable for the final twelve months of such lease, divided by twelve, unless the landlord notifies the tenant in writing at least thirty days before the lease expires that the landlord chooses to continue the same provisions for determining rent as were provided by such lease. If the landlord so notifies the tenant, then such provisions shall continue, provided, however, (1) that the rent shall not be subject to the "allowable adjustment" allowed by this section, (2) that the landlord may thereafter abandon this method of determining rent and use the other method provided by this subsection (13.80.050B,2) to determine the base rent (adding any "allowable adjustments" to determine the "maximum rent"), but only upon ninety days prior written notice to the tenant, and (3) that the landlord must abandon the gross sales method of determining rent and shall use the other method provided by this subsection (13.80.050B, 2) to determine the base rent (adding any "allowable adjustments" to determine the "maximum rent", if the rental unit fails to sell or produce substantially the same types of goods or services to the community as it did on October 1, 1981.

- 3. If, on the date this chapter becomes effective, the rental unit was held under a lease or rental agreement providing for fixed rental payments, and such rent has not been raised in the twelve months prior to that date, then the base rent shall be increased by the percentage of base rent which equals the following amount: five percent times the number of years (rounded off to the nearest year) between the date the rent on the rental unit was last raised (before enactment of this chapter) and the date this chapter becomes effective.
- 4. The base rent for any rental unit newly constructed after October 1, 1981, or not rented on October 1, 1981, shall be the lawful periodic rent actually charged for the first twelve months after the unit is rented. This method of establishing base

rent shall not be allowed, however, if the parcel on which such new unit is built contained, on October 1, 1981, a rental unit covered by this chapter, which a newly constructed unit has replaced.

C. Allowable adjustments.

1. The allowable adjustments shall be the unit's proportionate share of increases in periodic costs, to the landlord, since the end of the period used for determining the base rent under subsection B, or since the last allowable adjustment, whichever is later. Such costs shall include costs of maintenance and operating expenses, property taxes, fees in connection with the operation of the property, and improvements (amortized over the useful life of each improvement). Increased costs due to increased principal or interest charges on a loan shall not be allowed, however, where such increased charges result from a larger loan being taken on the property (as contrasted with increased charges resulting from increases in prevailing rates of interest), whether due to refinancing by the landlord or purchase financing by a new landlord.
2. No allowable adjustment shall be based on increased costs incurred with the intent to evade any of the purposes of this chapter.
3. The allowable adjustment shall not include an increase in any cost which the tenant is already required to pay by the terms of the lease on the rental unit (such as property taxes and insurance).
4. Allowable adjustments shall become effective only if the landlord gives the tenant at least thirty days prior written notice that the landlord is imposing the adjustment and thereby raising the rent. Such notice shall be served according to the provisions of Code of Civil Procedure section 1162 or by any reasonable manner agreed upon by the parties. The notice must specify the base rent, the costs which have risen, including the amortization period used for any improvements, their amounts and the method of apportionment among units. The notice must advise the tenant that,

upon the tenant's request within ten days, the landlord will furnish documentary evidence of the base rent and increased costs. If such request is made, the landlord shall furnish such documentary evidence within ten days after such request. If the landlord fails to furnish such evidence within ten days, the notice of allowable adjustment shall become null and void. The tenant's failure to request such evidence shall not be deemed a waiver of his right to later contest the validity of the rent increase.

- D. If a rental unit is hereafter subdivided into two or more rental units, then the base rents of the new units shall be determined by apportioning the base rent of the old unit and any allowable adjustments among the new rental units according to the square footage of each unit. If two or more rental units are hereafter consolidated into one rental unit, then the base rent on the new unit shall be the total of the base rents and any allowable adjustments on the former units.

(Ord. 5468-NS § 5, 1982.)

13.80.060 Extraordinary rent increase.

- A. If the application of this chapter, or any section or part thereof, would operate to violate the United States or California Constitution by denying a landlord a fair and reasonable return on investment or by confiscating the landlord's property, then such chapter, section, or part thereof shall apply to such landlord only to the extent that it does not deny him a fair and reasonable return on investment or confiscate his property.
- B. If a landlord believes a rent greater than is allowed by Section 13.80.050 is necessary to provide him with a fair and reasonable return on investment, such landlord shall petition for and obtain a declaration from the board of adjustments that such rent is permitted by this section, before increasing rent pursuant to this section.
- C. The board of adjustments shall enact regulations relating to its duties under this section, including the definition of "fair and reasonable return on investment."

(Ord. 5468-NS § 6, 1982.)

13.80.070 Services, lease provisions and assignments.

- A. No landlord shall reduce or eliminate any service to any rental unit covered by this chapter, unless a proportionate share of the cost savings due to such reduction or elimination is passed on to the tenant in the form of a decrease in rent. Nor shall any landlord delete or modify any provision of any existing or proposed lease or rental agreement, to the disadvantage of a tenant, unless the fair value of such deletion or modification is passed on to the tenant in the form of a decrease in rent.
- B. No lease entered into after the effective date of this chapter may contain any provision prohibiting or limiting the tenant's right to assign the lease to a purchaser of the tenant's business, except that a lease provision may condition such assignment on the purchaser being at least as capable of complying with the lease as the tenant, and a lease provision may condition such assignment on the payment to the landlord of any necessary and reasonable expenses caused the landlord by the assignment. No other payment to the landlord shall be required or made for his consent to the assignment. Any consideration paid to the tenant, directly or indirectly, for the transfer (by assignment, sublease, or otherwise) of any lease or sublease of any rental unit or part thereof shall be treated as part of the rent for the first month of occupancy after the transfer and, as such, shall be subject to the limitations on rent imposed by this chapter.

(Ord. 5468-NS § 7, 1982.)

13.80.080 Dispute resolution.

- A. In case of any dispute over the meaning or application of any provision of this chapter (except Section 13.80.090), a landlord, tenant, or any other interested party or neighborhood organization may petition the board of adjustments for resolution of the dispute. Where the city attorney determines that the city of Berkeley or any neighborhood thereof is an interested party, the city attorney may petition or otherwise appear on behalf of such party.
- B. Within a reasonable time after the effective date of this chapter, the board of adjustments shall adopt rules and regulations designed to

assure prompt and fair resolution of disputes which may arise under this chapter. Such rules and regulations shall include provisions assuring that timely notices of petitions and hearings shall be given to all affected parties. Such rules and regulations may include a schedule of reasonable fees to cover the cost of dispute resolution, and may indicate which party shall be responsible for such fees. The board of adjustments may thereafter amend, repeal, and supplement its rules and regulations as it deems appropriate to assure prompt and fair resolution of disputes.

- C. The board of adjustments may delegate its powers to hold hearings and render decisions under this section to groups of one or more members of the board, or to hearing officers, with or without the right to appeal to the full board, if such delegation will help to assure prompt and fair resolution of disputes.
- D. In any case in which the validity of any proposed or actual rent increase under the chapter is in dispute, the burden of proof shall be on the landlord to establish all facts which show that the rent increase is allowed by this chapter.
- E. The board of adjustments may issue orders to enforce its regulations and decisions.
- F. The decision of the board of adjustments shall be final, subject to the right of any party to seek judicial review in any court of competent jurisdiction. Such review may be sought by any affected landlord, tenant, the city of Berkeley, or any interested party or neighborhood organization, whether or not such party participated in the board of adjustments proceedings.
- G. The board of adjustments may, from time to time as it deems appropriate, adopt regulations which interpret various provisions of this chapter.
- H. If the board of adjustments becomes aware that any purpose of this chapter is being evaded or that it is not operating fairly toward landlords, tenants, or the community, the board shall promptly notify the city council and may recommend that appropriate amendments to this chapter be placed on the ballot.
- I. The board of adjustments shall have the powers and duties necessary to fulfill the purposes of this chapter.

(Ord. 5468-NS § 8, 1982.)

13.80.090 Evictions.

In any action to evict any tenant from any rental unit covered by this chapter, the landlord shall plead and prove that the landlord is in compliance with subsection 13.80.050A of this chapter, and that the action is being brought for one or more of the following reasons, which were stated in the notice of termination:

- A. The tenant has failed to pay the lawful rent to which the landlord is entitled, and failed to comply with a valid notice to pay or quit served pursuant to Code of Civil Procedure section 1161;
- B. The tenant has substantially violated an obligation imposed by the lease or rental agreement (other than an obligation to surrender possession at the end of a term or upon notice) and has failed to cure such violation within ten days after having received written notice thereof from the landlord;
- C. The tenant is committing or permitting to exist a nuisance in the building or parcel, or is causing a substantial interference with the comfort, safety or enjoyment of the building or parcel by the landlord or other tenants;
- D. The tenant is using the rental unit for some illegal purpose;
- E. The tenant, who had a lease or rental agreement whose term has expired, has refused (after receiving a request in writing) to execute a written extension or renewal thereof for a further term of like duration, containing provisions which are not inconsistent with this chapter and are materially the same as those in the previous lease or rental agreement;
- F. The tenant has refused to allow the landlord reasonable access to the premises to make necessary repairs or improvements, or to show the rental unit to a prospective purchaser, mortgagee, or tenant;
- G. The landlord in good faith seeks to recover possession in order to remove the rental unit from commercial use, after having obtained all the necessary permits to do so; provided, however, that if the landlord evicts for this reason and, within one year thereafter, the rental unit is being used for any commercial use, it shall be presumed that the landlord's stated purpose in evicting was false, in any action by the tenant against the landlord for abuse of process or malicious prosecution of a civil action;

- H. The landlord in good faith seeks to recover possession in order to repair code violations or improve the premises, after all necessary permits have been obtained, if it is not feasible to perform such repairs or improvements while the tenant remains in possession; provided, however, that when the repairs or improvements are completed, the landlord shall so notify the tenant and allow the tenant thirty days in which to decide whether or not to return to the premises.

(Ord. 5468-NS § 9, 1982.)

13.80.100 Retaliation.

No landlord shall in any way retaliate against any tenant for the tenant's assertion or exercise of any right under this chapter. Such retaliation shall be a defense in any action to evict the tenant and shall be subject to suit for actual and punitive damages, injunctive relief, and attorney's fees. The tenant need not exhaust any remedy before the board of adjustments prior to raising such defense or filing such suit. In any action wherein such retaliation is at issue, where the action was filed within six months of the tenant's assertion or exercise of rights, the burden shall be on the landlord to prove that the dominant motive for the act alleged to be retaliatory was some motive other than retaliation. (Ord. 5468-NS § 10, 1982.)

13.80.110 Remedies.

- A. If a landlord attempts to increase rent under subsection 13.80.050C, and any of the information in the notice of rent increase or supporting documentary evidence is false, inaccurate, misleading, or incomplete in any material way, then the notice of rent increase shall be null and void. If, in addition, it is proved that the landlord acted knowingly and willfully in providing such false, inaccurate, misleading or incomplete information or evidence, then the landlord shall pay the tenant, as a penalty, three times the amount of rent demanded in the notice of rent increase.
- B. Any affected tenant shall recover actual damages whenever the landlord receives or retains any rent in excess of the maximum amount allowed under this chapter, and whenever the landlord violates any eviction provision of this chapter. If, in addition, it is

proved that such act was in bad faith, the landlord shall pay the tenant, as a penalty, three times the actual damages.

- C. If a tenant fails to bring a civil or administrative action within one hundred twenty days of any violation of this chapter, then such action may be brought on the tenant's behalf by the city of Berkeley or any interested party or neighborhood organization, which shall retain one-half of any amount awarded in such action or received in settlement of such action.
- D. No exhaustion of the administrative remedies provided in Section 13.80.080 shall be required as a precondition to invoking any remedy provided by this section.
- E. In any action wherein any party succeeds in obtaining any remedy, in whole or in part, under this section, such party shall be awarded reasonable attorney's fees. If a party asserts a remedy under this section and fails to obtain any relief whatsoever, then the prevailing party shall be awarded reasonable attorney's fees.

(Ord. 5468-NS § 11, 1982.)

13.80.120 Waiver.

No provision in any lease, rental agreement, or agreement made in connection therewith, which waives or diminishes any right of the tenant under this chapter, is valid. (Ord. 5468-NS § 12, 1982.)

13.80.130 Application to pre-existing leases.

- A. This chapter shall not operate to change any provision in any fixed-term (as opposed to month-to-month) lease executed before October 1, 1981, and in effect on the date this chapter is enacted. Whenever such a lease expires, however, this chapter shall thereupon apply to the affected rental unit; provided, however, that if such lease is renewable at the landlord's or tenant's option, and such option is exercised, this chapter shall not apply to the rental unit until the renewed lease expires.
- B. Notwithstanding the provisions of subsection A above, any lease in effect on the date this

chapter is enacted, which lease was executed since one year prior to October 1, 1981, which increased the rent over the prior rent by more than the increase in the Consumer Price Index from the date the prior rent became operative to the date such lease was executed, shall have its rent reduced immediately to the prior rent, plus such increase in the Consumer Price Index. The purpose of this subsection is to preserve certain businesses which have recently received such high rent increases that they would but for this subsection find it necessary to take steps contrary to the purposes of this chapter, as set out in Section 13.80.020. This subsection shall not operate to deprive any landlord of a fair return on investment.

(Ord. 5468-NS § 13, 1982.)

13.80.140 Partial invalidity.

If any provision of this chapter or any application thereof is held invalid, such invalidity shall not affect any other provision or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. (Ord. 5468-NS § 14, 1982.)

13.80.150 Effective date.

This chapter shall become effective on the date it is enacted. (Ord. 5468-NS § 15, 1982.)

13.80.160 Evaluation.

At the end of each year this chapter is in effect, the comprehensive planning department shall report to the city council on the effectiveness of this chapter in carrying out the purposes set out in Section 13.80.020. This report shall also identify any other positive or negative effects of the chapter and may make recommendations concerning whether the chapter should be left in operation or repealed and whether the scope of the chapter should be expanded to include other neighborhood shopping districts in the city of Berkeley, outside the downtown business district. (Ord. 5468-NS § 16, 1982.)

Ord 5468-NS, pertaining to the Elmwood commercial rent stabilization and eviction protection program was approved at the municipal election held on June 8, 1982.

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